

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

Criminal No. 2:19-cr-47
Honorable Raymond A. Jackson

KENT MAERKI, et al.,

Defendants.

DEFENDANTS' UNOPPOSED MOTION TO CONTINUE

Comes now the defendants, Kent Maerki, David Alcorn, Aghee William Smith, Tony Scott Sellers and Thomas L. Barnett, by counsel, and hereby move for the entry of an order continuing the trial date in this case. In support of this motion, defendants represent as follows:

1. The defendants were all named in a 19-count indictment filed March 21, 2019. ECF No. 1. The defendants are charged with Conspiracy to Commit Mail and Wire Fraud (Counts 1 and 2), Wire Fraud (Counts 3-17), Conspiracy to Launder Monetary Instruments (Count 18), Unlawful Monetary Transactions (Count 19) and Criminal Forfeiture. *Id.* The defendants entered not guilty pleas on May 1, 2019, and jury trial is scheduled for January 21, 2020. ECF Nos. 42, 46, 49, 51 and 54. Defendants all waived their rights under the Speedy Trial Act and the appropriate findings and rulings were made by the Court regarding the setting of the trial date beyond the Speedy Trial cut-off date. *Id.*

2. The defendants are all on bond and have complied with their conditions of release.

3. The discovery in this case is voluminous (approximately 4 terabytes)¹ and has not yet been completely reviewed by defense counsel. Moreover, due to their respective caseloads and

¹ See Exhibit 1 filed with this motion which describes the nature of the discovery received to date which includes, but not limited to, 123 audio files, 44 video files, 156,576 word/pdf documents and spreadsheets and an additional 185,286 pages in pdf documents.

trial schedules, defense counsel will not be able to review, digest and analyze this discovery – as well as perform their own respective investigation and prepare for a trial in January. Another factor is that all of the defendants live outside of Virginia. Defendants Maerki, Alcorn (and defendant Norma Jean Coffin) live in Arizona. Defendants Smith and Barnett live in California and defendant Sellers lives in Idaho. Because of this distance, discussing and reviewing voluminous discovery with the respective defendants will take time. Accordingly, defense counsel are requesting at least another two months to review the discovery, consult with their clients and prepare for trial.

4. In addition, counsel for defendant Thomas L. Barnett is scheduled to begin another trial on January 7, 2020 with Chief Judge Davis which, upon information and belief, is expected to last three to five weeks.² That case is *United States v. Burnett*, et al, 4:17-cr-111.

5. Defense counsel have discussed this motion with their respective clients and all defendants are in agreement with this motion and believe a continuance of the current trial date is in their best interests.

6. Counsel for defendant Aghee William Smith, II, has spoken with the counsel for the United States and the United States does not object to this motion. Counsel for defendant Norma Jean Coffin takes no position on this motion.

7. Subject to the Court's calendar and availability, the defendants respectfully request a trial date in March or April, 2020.

² This trial date was set on April 30, 2019. *United States v. Burnett*, et al, 4:17-cr-111, ECF No. 355.

Memorandum of Law in Support

Whether to grant a motion for a continuance is within the broad discretion of the district court. *See, e.g. United States v. Cronin*, 466 U.S. 648, 662-66 (1984); *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983); and *United States v. Hoyte*, 51 F.3d 1239, 1245 (4th Cir. 1995). The defendants are not seeking a continuance simply for sake of delay. Rather, they seek additional time so that defense counsel may review and analyze the discovery – which is voluminous –, perform the appropriate investigation, consult with their out-of-state clients and prepare for trial. In short, defense counsel require more time to properly investigate and prepare. Finally, the defendants (with the exception of defendant Coffin who takes no position on this motion) are all in agreement with this motion.

Because “the ends of justice served by the granting of a continuance outweigh the best interests of the public and the defendants in a speedy trial,” counsel for the defendants ask the Court to grant this motion and continue the trial date. *See* 18 U.S.C. § 3161(h)(7)(A).

WHEREFORE, defendants respectfully pray for the entry of an order granting this motion.

Respectfully submitted,

KENT MAERKI, DAVID ALCORN,
AGHEE WILLIAM SMITH, II, TONY
SCOTT SELLERS and THOMAS L.
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By: _____/s/_____
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CERTIFICATE OF SERVICE

I certify that on this 12th day of November, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification (NEF) to:

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